



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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OFFICE OF
ECOSYSTEMS,
TRIBAL AND PUBLIC
AFFAIRS

July 29, 2015

William W. Stelle, Jr., Regional Administrator
National Oceanic and Atmospheric Administration
National Marine Fisheries Service, West Coast Region
7600 Sand Point Way Northeast, Building 1
Seattle, Washington 98115-0070

Dear Mr. Stelle:

We have reviewed the National Oceanic and Atmospheric Administration's February 2015 Draft Environmental Impact Statement on the Makah Tribe Request to Hunt Gray Whales (EPA Region 10 Project Number: 08-030-NOA).

Our review was conducted in accordance with the EPA's responsibilities under the National Environmental Policy Act and Section 309 of the Clean Air Act. Section 309 specifically directs the EPA to review and comment in writing on the environmental impacts associated with all major federal actions. Our review of the DEIS prepared for the proposed action considers expected environmental impacts and the adequacy of the EIS in meeting procedural and public disclosure requirements of the NEPA. We are rating the DEIS "LO" (Lack of Objections) because we have not identified any potential impacts requiring substantive changes to the proposal. A copy of our rating system is enclosed.

Project summary

The DEIS considers various alternatives to the Makah Indian Tribe's proposal to resume treaty-based hunting of eastern North Pacific gray whales for ceremonial and subsistence purposes. The Tribe proposes to harvest up to 24 whales over a 6-year period, with no more than five gray whales harvested in any single year.

Adaptive management

In our July 2012 scoping comments we noted NOAA's interest and effort to plan for effective adaptive management. We stated that your adaptive management efforts were appropriate, in part because of substantive scientific issues such as potential problems with population estimates for eastern North Pacific gray whales, genetic evidence of a population substructure that may warrant consideration as a separate management unit, and whale tracking data indicating that some members of the endangered western stock of gray whales migrate into the Makah hunting area. To assist your adaptive management efforts, we recommended consideration of two documents from the Council on Environmental Quality – the 2003 NEPA Task Force Report, "Modernizing NEPA Implementation" and CEQ's "Guidance for Mitigation and Monitoring."

The DEIS is responsive to our scoping comments because all of the action alternatives' harvest limits are based on current conditions and could change based on updated information.

While all of the action alternatives adaptively manage harvest limits, Alternative 6 provides the most meaningful opportunity to adaptively manage the method for calculating harvest limits, as well as hunt timing and hunt area. Alternative 6 provides the most meaningful additional opportunity for adaptive management because it is the only alternative where NOAA's waiver of the Marine Mammal Protection Act take moratorium would expire, and because the term of any hunt permit would be relatively shorter than the other action alternatives.

We believe there is a larger opportunity for adaptive management with Alternative 6, and that it would be environmentally preferable because it provides a more meaningful opportunity to consider updated information on scientific issues and certain environmental consequences, several of which are characterized in the DEIS as having mixed beneficial and adverse impacts.

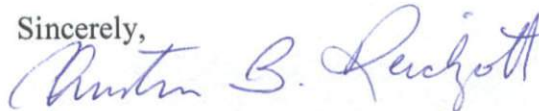
In the interest of further developing Alternative 6 in regards to the unique element of limited duration for regulations and permits, we recommend that the Final EIS include additional supporting information for the proposed waiver and permit expiration periods (10 and 3 years respectively), and that it identify:

- reasons why NOAA believes 10 years is a reasonable amount of time to develop additional information about stock structure as well as any other reasons why 10 years would be an appropriate duration limit for the waiver; and,
- concern(s) about a 5 year permit period that could be addressed with a 3 year permit period.

To the extent that additional information supports altering the proposed duration limits for regulations and permits, we would expect to see those alterations reflected in the FEIS.

Thank you for this opportunity to comment. If you have any questions, please contact me at (206) 553-1601 or reichgott.christine@epa.gov, or you may contact Erik Peterson of my staff at (206) 553-6382 or peterston.erik@epa.gov.

Sincerely,



Christine B. Reichgott, Manager
Environmental Review and Sediment Management Unit

Enclosure:
EPA Rating System for Draft Environmental Impact Statements

**U.S. Environmental Protection Agency Rating System for
Draft Environmental Impact Statements
Definitions and Follow-Up Action***

Environmental Impact of the Action

LO – Lack of Objections

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO – Environmental Objections

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 – Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 – Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.